

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
DEC 14 2006

Clerk

HOT STUFF FOODS, LLC, F/K/A
ORION FOOD SYSTEMS, LLC,
Plaintiff,
-vs-
MEAN GENE'S ENTERPRISES, INC.,
GENE OKERLUND, BLAZE OKERLUND,
TODD OKERLUND, AND MARK MCKEE,
Defendants,
and
EUGENE OKERLUND,
Counterclaim Plaintiff,
v.
HOT STUFF FOODS, LLC,
Counterclaim Defendant.

* * * * *

CIV. 06-4085

MEMORANDUM OPINION
AND ORDER RE: MOTION TO COMPEL

Pending before the Court is Defendant and Counterclaim Plaintiff Gene Okerlund's Motion to Compel Re: Information Concerning Mean Gene's Locations. Doc. 80. In this Motion Okerlund is requesting the Court to order Plaintiff and Counterclaim Defendant Hot Stuff Foods to produce documents identifying the names and addresses of retail locations selling "Mean Gene's Burgers" or "Mean Gene's Pizza" products, specifically regarding the monthly sales of Mean Gene's products to those locations and the royalty payments due to Okerlund as result of those sales for the months subsequent to April of 2006. That information had been provided by Hot Stuff in the royalty payment calculation statements through the month of April 2006. In resisting the motion, Hot Stuff contends there are no pending discovery requests to which the information is responsive, and the

requested information is not relevant to any of the claims or counterclaims at issue in this litigation. Hot Stuff further contends that Okerlund could obtain the exact information he is looking for if he merely spent a few minutes with the documents already provided.

The federal rules permit liberal discovery for the purpose of assisting in the preparation and trial, or the settlement, of litigated disputes. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984); *Miscellaneous Docket Matter No. 1 v. Miscellaneous Docket Matter No. 2*, 197 F.3d 922, 925 (8th Cir. 999). Although the Court's recent Memorandum Opinion and Order Re: Motion to Cancel Trademark Registration and Request for Permanent Injunction(Doc. 86) resolved many of the issues in this action, unresolved issues still exist in this action. Further, the Court is not convinced that Okerlund could find all the information he is seeking by spending a few minutes with the recent royalty payment calculation statements. Nor is the Court convinced that Okerlund should have to spend that additional time when Hot Stuff has previously provided such information and could continue to do the same. Accordingly,

IT IS ORDERED that Defendant and Counterclaim Plaintiff Gene Okerlund's Motion to Compel Re: Information Concerning Mean Gene's Locations (Doc. 80) is granted..

Dated this 14th day of December, 2006.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Shelly Margulies
(SEAL) DEPUTY